

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.154 OF 2002**

Union of India

...Applicant

vs.

1.Nambi Punnilath Kader

2.State of Maharashtra

...Respondents

Mr.H.V.Mehta for the Applicant

Mr.Rajesh More, A.P.P. for State

**CORAM: A.S.OKA,J.
DATE : SEPTEMBER 7,2006.**

P.C.:

1. Heard Shri Mehta for the Applicant in support of this Application for grant of leave to prefer an Appeal against acquittal.

2. The first Respondent was prosecuted for offences under sections 135 (1) (a) and 135 (1) (b) of the Customs Act, 1962 and section 5 of the Imports and Exports (Control) Act, 1947.

3. According to the case of the Applicant the first Respondent arrived at International Airport at Mumbai on 11th August 1988. The first Respondent was intercepted after he came out. On personal search it was found that the first Respondent was in possession of the six Crude gold chains of foreign origin collectively weighing 700 grams. The gold chains were concealed in the socks on the person of the first Respondent. By the Judgment and Order dated 3rd May 2001, the first Respondent has been acquitted by the learned

Metropolitan Magistrate.

4. After having heard Shri Mehta for the Applicant and after perusing the impugned Judgment and Order, I find that no case is made out for grant of leave. The learned Trial Judge has noted that after charge was framed on 15th March 1989, witness summonses were issued to various witnesses and in fact it is noted that the warrants were issued against the Superintendent of Customs and other witnesses. The report submitted by the Customs Department disclose that the witnesses were not traceable. Though the trial remained pending almost for twelve years, the Applicant could not procure the presence of the witnesses.

5. Secondly, the learned Trial Judge has held that neither the seized property was shown to have the foreign marking nor any certificate from the Government of India Mint was produced by the prosecution. It is also noted that the prosecution has failed to produce certificate of any other expert.

6. If this the factual position, no fault can be found if the order of acquittal was made in favour of the first Respondent.

Application is rejected.

JUDGE